



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Appln. Of: CARROLL

Serial No.: 09/883,703

Filed: June 18, 2001

For: APPARATUS AND SYSTEM FOR IDENTIFYING. . .

Group: 2632

Examiner: TAI T. NGUYEN

DOCKET: SCP 00.01

MAIL STOP APPEAL BRIEF -- PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Dear Sir:

In connection with the above-entitled matter, enclosed please find the following:

1. Three copies of Appellant's Brief on Appeal and Appendix A under Rule 192; and
2. Credit Card Payment Authorization Form PTO-2038 in the amount of \$500.00 to

cover the cost of filing the Appeal Brief.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account No. 08-1391.

Respectfully submitted,


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APPELLANT'S BRIEF ON APPEAL

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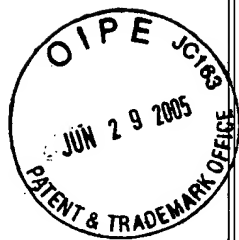
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APPELLANT'S BRIEF ON APPEAL

This Brief is being filed in support of Appellant's Appeal from the Office Action Rejection by the Examiner to the Board of Appeals and Interferences. The Notice of Appeal, along with the prescribed fee, were filed on May 24, 2005.

REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal is Secure Care Products, Inc., having its principal place of business at 39 Chenell Drive, Concord, New Hampshire 03301-8501. The Application has been assigned to Secure Care Products, Inc. by the inventor Craig Carroll, and the Assignment recorded in the U.S. Patent and Trademark Office on June 18, 2001, at Reel 011916, Frame 0358.

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RELATED APPEALS AND INTERFERENCES

To the best of the knowledge of the undersigned attorney and Appellant, there are no other appeals or interferences that would directly affect, or be directly affected by, or have a bearing on, the Board's decision in the present Appeal.

STATUS OF THE AMENDMENTS

All amendments have been entered. The instant application is an RCE application that was filed April 2, 2003, with the most recent amendment (Amendment F under Rule 116) entered on April 11, 2005.

STATUS OF THE CLAIMS ON APPEAL

Claims 1-3, 5, 8-14, 16 and 19-20 are pending in the application. The claims on appeal are claims 1-3, 5, 8-14, 16 and 19-20, and are set forth in **Appendix A**, attached hereto.

BACKGROUND OF THE INVENTION

The invention on Appeal relates to a match identification system for identifying, e.g., an infant-mother match in the hospital that is independent of name and allows for verification before the infant is brought into the mother's presence.

Commonly, prior to the invention, a pregnant woman, upon arrival to the hospital, is fitted with an identification band containing pertinent identifying information. When her baby is born, the infant is fitted with an identification band that typically contains information corresponding to the information on the mother's band. While in the hospital following birth, the infant may be transported to various locations throughout the hospital. When the infant is returned to its mother, the bands on the mother and infant are compared by visual inspection to insure the proper identity of the infant. This system of identification has two disadvantages. First, in a large hospital where there are many patient rooms with maternity wards potentially

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spanning several floors, it is possible that two or more mothers-infant pairs may have similar names resulting in an infant being brought to a patient who is not its mother. When the problem is realized and corrected, there is bound to be a degree of emotional stress, especially during the highly emotional time surrounding childbirth.

The second disadvantage of the prior art is that it requires that the infant and mother be brought into close proximity for visual inspection of the identification bands each time the infant is brought into the mother's room. If the infant is already in the mother's presence, perhaps even in her arms, before an error in identification is realized, this again may result in emotional stress.

It is therefore desirable to have a system that overcomes the deficiencies of the prior art by allowing verification of a mother-infant match that is independent of name and allows for verification before the infant is brought into the mother's presence.

SUMMARY OF THE INVENTION ON APPEAL

The invention on Appeal is an identification system that overcomes the above discussed as well as other disadvantages of the prior art. More particularly, the present invention provides an electronic identification system comprising a plurality of transmitters and receivers that exchange unique identification codes corresponding to an infant and its mother.

(Specification, page 5, lines 7-20).

Each transmitter 102 is configured to transmit only a single signal comprising a unique identification code corresponding only to that transmitter. Each receiver 104 is configured to receive only one signal, an incoming identification code, and then compare the incoming identification code to its unique reference code. (Specification, page 6, lines 1-8 and Fig. 1). Receivers respond positively when the incoming identification code matches the receiver's

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unique reference code (Fig. 2). Additionally, receivers are capable of holding information regarding their location, and include a user interface that permits programming of memory.

The basic element of the identification system of the claimed invention is a transmitter-receiver pair. For example, transmitters 102 might be attached to an infant's anklet and receivers 104-1, 104-2 ... 104-n mounted outside of each maternity room of a hallway 300. (Specification, page 9, lines 9-14 and Fig. 3). As an infant is brought down the hallway, the receivers detect the signal emanating from the infant's transmitter as it passes. A display 204 on the receiver would indicate whether or not the infant is a match with the mother in the room. (Specification, page 11, lines 10-17 and Fig. 2). Accordingly, the identity of the infant can quickly be determined without bringing the mother and baby into close proximity.

The invention is potentially useful for a variety of other applications such as shipment of cargo wherein the packages being moved have embedded transmitters tuned to match a receiver placed at each final destination of the packages. (Specification, page 4, line 18 -- page 5, line 6).

ISSUE PRESENTED ON APPEAL

I. Whether claims 1-3, 5, 8-11, 16 and 19-20 are unpatentable under 35 U.S.C. § 103(a) as obvious over Murray et al. (U.S. Patent No. 5,086,290, hereinafter "Murray et al.") in view of Davies (U.S. Patent No. 4,924,211, hereinafter "Davies").

II. Whether claims 12-14 are unpatentable under 35 U.S.C. § 103(a) as obvious over Murray et al. in view of Davies and further in view of Radomsky et. al. (U.S. Patent No. 6,211,790, hereinafter "Radomsky et al.").

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THE FINAL ACTION

The Examiner finally rejects claims 1-3, 5, 8-11, 16 and 19-20 as obvious from Murray et al. in view of Davies as follows:

“...Murray et al. disclose an identification system (figures 1-2) comprising:

a plurality of transmitters (10, col. 1, lines 28-53), each transmitter being configured to transmit only a single unique coded signal comprising a unique identification code corresponding only to the transmitter (col. 2, lines 13-16); and

at least one receiver (24, figure 2) being configured to receive only one signal whereby to establish a comparison indication based on comparison on the unique identification code with a unique reference code, wherein the receiver is programmed to respond positively to the unique identification code that matches the receiver with only one of the transmitters (claim 4). Murray et al. disclose everything claimed except for the specific use of a plurality of receivers and each of the receivers having a programmable memory for storing the unique reference code, capable of holding information regarding the location of the receiver and each receiver including a user interface configured to program the memory. Davies teaches a plurality of receivers (10a, 10b, 14) responding to a plurality of transmitters (12a, 12b), each receiver and transmitter having a unique programmable identification code corresponding to each other respectively (col. 5, lines 4-20), wherein the receiver comprises a programmable memory (98) for storing an unique local identification code related to the receiver (col. 5, lines 5-48) and each receiver includes a user interface (80) configured to program the memory (figure 1; col. 6, lines 40-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the plurality of receivers and user interface taught by Davies in the system disclosed by Murray et al. for the purpose of enabling the system to be used with a plurality of independent users and programming an identification code in the memory corresponding to each individual user.”

And, claims 12-14 have been rejected as being obvious from Murray et al. in view of

Davies and further in view of Radomsky et al. as follows:

“...Murray et al., as modified, disclose everything claimed except for the transmitter being coupled to an identification band coupled to an associated infant. Radomsky et al. teach a

transmitter (400) being coupled to an identification band (304) coupled to an associated infant (Fig. 11; column 10, lines 10-30). It will have been obvious to one of ordinary skill in the art at the time the invention was made that the transmitter of Murray et al., as modified, could have been used with an infant, as suggested by Radomsky et al. for the purpose of monitoring an infant."

GROUPING OF CLAIMS

Claims 1-3, 5, 8-11, 16 and 19-20 are grouped together as containing the same essential patentable limitations and thus stand or fall together.

Claims 12-14 are grouped together as containing the same essential patentable limitations and thus stand or fall together.

THE REFERENCES

Murray et al.

Murray et al. teaches a mobile perimeter monitoring system comprising a two unit system composed of a mobile transmitter having a predetermined range, and a receiver having an alarm signal and a mode switch which places the receiver in either a monitoring mode (if the receiver moves beyond the transmitter's range, an alarm will sound) or a tracking mode (if the receiver is within the transmitter's range, an alarm will sound). (Column 1, lines 56-62). An example of the disclosed invention is that of a child monitoring system wherein a parent or guardian would be alerted by an alarm should the child move beyond a predetermined area.

Davies

Davies teaches a system for monitoring the presence of a person at a monitoring location, e.g., for monitoring persons subject to house arrest. The system is composed of three components: (1) a plurality of local monitoring units 10a, 10b..., each incorporating a transmitter, and associated with one monitoring location; (2) a plurality of "tags" 12a, 12b... (containing a severance detection circuit) each attached to one person to be monitored; and (3)

and a mobile unit 14 incorporating a report signal receiver. The local unit is capable of three functions: (1) it can detect the presence of the person to be monitored (e.g., a parolee); (2) it can detect a nearby mobile unit; and (3) it can transmit presence or non-presence information (the "report signal"). The mobile unit, which can be carried in a vehicle or by a monitoring officer, is capable of detecting the report signal. Specifically, the mobile unit indicates whether it is within range of a local unit report signal, whether it has obtained a report signal, and what the status of the report is (is the monitored person present or not present?). (Column 2, lines 42-68; column 3, lines 1-19 and Fig. 2).

Davies also provides for a "callout signal" to be sent from the mobile unit to initiate a report signal to be sent from the local unit. The callout signal may also produce a perceptible (audio or visual) indication at the local unit which could be used for, among other things, indicating to the monitored person that he is to come to the front of the house. (Column 3, lines 32-50). The callout signal sent by the mobile unit transmitter must match the local identification code of only one local unit. Mobile units will therefore, interact with only one local unit. (Column 10, lines 67-68; column 11, lines 1-2). The local identification code defines the local unit using four trinary digits. The local unit is designed to test incoming signals and reject all incoming signals that do not have a matching local identification code. (Column 5, lines 30-45).

Radomsky et al.

Radomsky et al. disclose a dual-bowed (matching and security) transmitter (404) coupled to an identification band (304) coupled to an associated infant. (Fig. 11; column 10, lines 10-30). In a matching mode of operation IR signals are received by infrared receivers located within the various rooms of the hospital to determine by proximity that mother and

infant are correctly united. In the presence detecting mode, RF signals from the infant's badge are detected by RF receivers located throughout the maternity ward and/or the hospital to detect RF signals and generate an arm to detect the attempted unauthorized removal of the infant from the maternity ward and/or the hospital (Abstract).

ARGUMENTS ON APPEAL

I. The Rejection of Claims 1-3, 5, 8-11, 16 and 19-20 as Unpatentable Under 35 U.S.C. § 103(a) Over Murray et al. In View of Davies Is In Error.

As this Board has observed on numerous occasions, the initial burden of establishing a basis for denying patentability to a claimed invention rests upon the Examiner. In re Paisecki, 745 F.2d 1468, 223 USPQ 785 (Fed. Cir. 1984). "Broad conclusory statements regarding the teachings of multiple references, standing alone, are not evidence." Id., citing McElmury v. Arkansas Power and Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) (internal quotations omitted). Moreover, in order for a combination of prior art to *prima facie* render obvious Appellant's claimed invention the asserted combination of prior art must (1) provide all of the limitations of Appellant's claimed invention, and (2) provide some motivation to one skilled in the art to selectively combine them so as to achieve the claimed invention. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). For reasons that are presented in greater detail below, Appellant respectfully submits that none of the prior art of record in this case, whether taken singly or in any combination can be said to satisfy either prong of the In re Fine test.

A. Murray et al. in View of Davies Does Not Teach Every Element of the Claimed Invention.

The Examiner concedes that the primary reference Murray et al. does not teach: (1) use of multiple receivers; or (2) each of the receivers having programmable memory for storing

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unique reference codes; or (3) each of the receivers having the capability to store information regarding the location of the receiver; or (4) each of the receivers having user interfaces configured to program the memory.

However, the Examiner cites Davies as supplying the missing teachings. According to the Examiner, Davies discloses use of multiple receivers responding to multiple transmitters based on a unique programmable identification code, wherein the receiver comprises a programmable memory for storing the identification code configurable via a user interface.

Actually, both the primary reference Murray et al. and the secondary reference Davies are fundamentally different from Appellant's claimed invention and from one another. Murray et al. is a perimeter monitoring system designed to trigger a signal or an alarm when a child or pet wanders outside of a predetermined range. Essentially, Murray et al. is a two unit system comprising a mobile transmitter designed to be worn by a child or pet which provides a signal to a receiver which processes the signal and provides an alarm function should the transmitter move out of range of the receiver. Davies describes a personnel monitoring system designed for monitoring presence of individuals at preselected monitoring locations, i.e. for maintaining control of persons subject to house arrest. Davies' system includes a tag carried by the monitored person; a local unit, at each monitoring location to determine whether the monitored person is present or absent, and a mobile unit for communicating with each local unit for detecting a report signal from the local unit and/or to provide a callout signal to the local unit to instruct the monitored person to present himself for inspection.

Thus, the primary reference Murray et al. is a mobile perimeter monitoring system capable of monitoring whether a transmitter and a receiver are within range or beyond range.

In other words, in Murray et al., the transmitter and receiver simply provide information

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regarding a location of one relative to the other. Similarly, Davies' tag and local unit also are designed to determine the presence or absence of associated (tagged) person within a predetermined range of a local unit. There is nothing within the four corners of Davies that teaches or suggests that the receiver or local unit have the capacity to store information regarding the location of that unit. Nor is there any reason for Davies to include this capability since Davies' local unit is fixedly located. And, there is no teaching or suggestion within the four corners of Davies that each of the local units have user interfaces configured to program the memory as required by Appellant's independent claims 1 and 11.

In the Advisory Action the Examiner takes the position that Davies teaches the code being related to the location of the receiver. Appellant respectfully submits that Examiner has confounded "identification code" with "information regarding the location of the receiver." The identification code taught by Davies (See column 5, lines 29-48), is composed of four trinary digits that are used to match a local unit to a mobile unit. "[T]he callout signal sent by transmitter 88 will match the local identification code of only one local unit 10. Mobile unit 14 therefore will interact with only one local unit at a time." (Column 10, lines 67-68; column 11, lines 1-2). In Davies, a local unit is ranged to test incoming signals for its particular identification code and reject all other incoming signals which do not bear this code. In other words, both Murray et al. and Davies are perimeter monitoring devices. The primary reference Murray et al. operates completely independent of location. That is to say, all that Murray et al. is concerned with is in providing an in-range or out-of-range indication depending on whether the receiver is within an effective range of the transmitter or outside of its effective range. However, information as to actual location is not provided by Murray et al.

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Davies similarly provides an in-range or out-of-range implication on a one-to-one match between a fixedly positioned local monitoring unit and a person to be monitored. Davies also includes a mobile unit for selectively interrogating or addressing the local monitoring units. Thus, Murray et al. and Davies are quite different in structure and function from one another and from Appellant's claimed invention.

Nowhere does Davies disclose using memory to store location information *in addition to identification codes* as required by independent claims 1 and 11 of Appellant's invention. Nor does Davies teach that each receiver include a user interface configured to program memory as required by independent claims 1 and 11.

As this Honorable Board is well aware, to establish a *prima facie* case of obviousness based on a combination of references, there must be some teaching, suggestion, or motivation in the prior art to make the specific combination that was made by the Appellant. In re Dance, 48 USPQ2d 1635 (BNA 1998). The Federal Circuit has stated that if a proposed modification to a prior art invention makes it unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). MPEP 2143.01.

According to the Examiner, Murray et al. and Davies can be combined for the purpose of enabling the system to be used with a plurality of independent users and programming an identification code in the memory to correspond to each individual user. However, modifying Murray et al. in this regard would defeat Murray et al.'s intended purpose and utility.

As previously discussed, Davies specifically teaches that mobile units should uniquely correspond to local units via the local identification code. This facilitates officers obtaining status information for a specific parolee rather than information from every local unit about

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every parolee. Murray et al. by contrast, while mentioning the possible use of multiple transmitters corresponding to multiple children, specifically teaches that such configuration is undesirable (Col. 1, lines 43-50). Thus, modifying Murray et al. in view of Davies as suggested by the Examiner would produce a system wherein the parent would need numerous receivers -- one for each child being monitored.

Accordingly, it is respectfully submitted that no combination of Murray et al. and Davies reasonably could be said to achieve independent claim 1 or independent claim 11 or any of the several claims 2, 3, 5, 8-10, 16, 19 and 20 which depend thereon.

II. The Rejection of Claims 12-14 as Unpatentable Under 35 U.S.C. § 103(a) Over Murray et al. In View of Davies and Further In View of Radomsky et al. Likewise Is In Error.

Claims 12-14 are directly dependent on claim 11. The deficiencies of the combination of Murray et al. and Davies vis-à-vis claim 11 are discussed *supra*. It is submitted that Radomsky et al. does not supply the missing teachings to Murray et al. and Davies to achieve or render obvious claim 11 or any of the claims 12-14 which depend thereon.

With regard specifically to the rejection of claim 12, the Examiner acknowledges that the combination of Murray et al. and Davies fails to teach or suggest an identification band coupled to an associated infant. However, the Examiner relies on Radomsky et al. for this missing teaching. Radomsky et al. teaches a patient matching and security system which includes matching, monitoring and detects unauthorized removal of an infant from the hospital maternity ward and/or the hospital. Radomsky et al. has been cited as teaching a transmitter coupled to an identification band coupled to an associated infant, and is acknowledged as so teaching. However, the more basic and essential combination of features missing from Murray

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et al. and Davies as required by claim 11 and claim 12 which depends thereon are not provided by Radomsky et al.

Similar comments apply to dependent claims 13 and 14. Accordingly, it is submitted that no combination of Murray et al., Davies and Radomsky et al. reasonably could be said to achieve or render obvious claim 11 or claims 12-14 which depend thereon. Accordingly, the rejection of claims 12-14 as obvious from Murray et al. in view of Davies and Radomsky et al. is in error.

SUMMARY

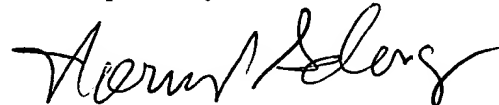
It is respectfully submitted that the claimed invention is patentably distinct over the prior art of record. None of the prior art of record alone or in combination discloses or suggests all of the limitations of Appellant's claimed invention, and the asserted prior art fails to provide motivation to one skilled in the art to selectively combine and modify their teachings to achieve the instant claimed invention. Therefore, it is respectfully submitted that the rejections of the claims on appeal under 35 U.S.C. § 103(a) are in error.

CONCLUSION

In view of the foregoing, it is respectfully requested that the rejection of the subject application be reversed in all respects.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,




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APPENDIX A

CLAIMS ON APPEAL

Claim 1: An identification system comprising:

a plurality of transmitters, each said transmitter being configured to transmit only a single unique signal comprising a unique identification code corresponding only to said transmitter; and

a plurality of receivers, each said receiver being configured to receive only one said signal whereby to establish a comparison indication based on comparison of said unique identification code with a unique reference code;

wherein each said receiver is programmed to respond positively to said unique identification code that matches said receiver with only one said transmitter; and

wherein each said receiver comprises programmable memory for storing said unique reference code, capable of holding information regarding the location of said receiver, and each said receiver includes a user interface configured to program said memory.

Claim 2: The identification system of claim 1, wherein said comparison indication is positive if said unique identification code matches said unique reference code.

Claim 3: The identification system of claim 1, wherein said comparison indication is negative if said unique identification code does not match said unique reference code.

Claim 5: The identification system of claim 1, wherein each of said receivers further comprises a controller and an indicator, said controller being configured to communicate with said indicator, wherein said indicator provides said comparison indication based on comparison of said unique identification code with said unique reference code stored in said memory.

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Claim 8: The identification system of claim 1, wherein at least one of said receivers is mounted to a fixed structure.

Claim 9: The identification system of claim 8, wherein said fixed structure is a wall.

Claim 10: The identification system of claim 1, wherein said unique reference code is the same as said unique identification code.

Claim 11: An apparatus for identifying an infant-mother match from amongst several matches, comprising:

a plurality of transmitters, each said transmitter being configured to transmit only a single unique signal comprising a unique associated identification code for a specific infant; and

a plurality of receivers, each said receiver being configured to receive only one said unique signal whereby to establish a comparison indication based on comparison of said unique identification code with a unique reference code;

wherein each said receiver is programmed to respond positively to said unique identification code that matches said receiver with only one said transmitter; and

wherein each said receiver comprises programmable memory for storing said unique reference code, capable of holding information regarding the location of said receiver, and each said receiver includes a user interface configured to program said memory.

Claim 12: The apparatus of claim 11, wherein at least one of said transmitters is coupled to an identification band, which identification band in turn is coupled to said associated infant.

Claim 13: The apparatus of claim 11, wherein said comparison indication is positive if said unique identification code for said associated infant matches said unique reference code for a mother of said infant.

Claim 14: The apparatus of claim 11, wherein said comparison indication is negative if said unique identification code for said associated infant does not match said unique reference code for a mother of said infant.

Claim 16: The apparatus of claim 11, wherein each of said receivers further comprises a controller and an indicator, said controller configured to communicate with said indicator, wherein said indicator provides said comparison indication based on comparison of said identification code with said reference code stored in said memory.

Claim 19: The apparatus of claim 11, wherein at least one of said receivers is mounted to a fixed structure.

Claim 20: The apparatus of claim 19, wherein said fixed structure is a wall.

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